

## REMARKS

In the Office Action dated December 12, 2008, claims 1, 3-6, 8-12, 14, 16-19, and 21-25 were presented for examination. Claims 1, 3-6, 8-12, 14, 16-19, 21-23, and 25 were rejected under 35 U.S.C. §103(a) as unpatentable over *Short et al.*, U.S. Patent No. 6,178,529, in view of *Szabo et al.*, U.S. Patent No. 7,065,746, in view of *Frank et al.*, U.S. Patent No. 6,871,222, and in further view of *Engel*, U.S. Patent No. 6,681,389. Claims 1, 3-6, 8-12, 14, 16-19, 21-23, and 25 were rejected under 35 U.S.C. §103(a) as unpatentable over *Short et al.*, U.S. Patent No. 6,178,529, in view of *Szabo et al.*, U.S. Patent No. 7,065,746, in view of *Frank et al.*, U.S. Patent No. 6,871,222, in view of *Thomas et al.*, U.S. Patent No. 6,460,052, and in further view of *Engel*, U.S. Patent No. 6,681,389.

### **I. Rejections Under 35 U.S.C. §103(a)**

In the Office Action dated December 12, 2008, the Examiner assigned to the application rejected claims 1, 3-6, 8-12, 14, 16-19, and 21-25 under 35 U.S.C. §103(a) as being unpatentable over *Short et al.*, U.S. Patent No. 6,178,529, in view of *Szabo et al.*, U.S. Patent No. 7,065,746, in view of *Frank et al.*, U.S. Patent No. 6,871,222, and further in view of *Engel*, U.S. Patent No. 6,681,389, and rejected claims 1, 3-6, 8-12, 14, 16-19, 21-23, and 25 were rejected under 35 U.S.C. §103(a) as unpatentable over *Short et al.*, U.S. Patent No. 6,178,529, in view of *Szabo et al.*, U.S. Patent No. 7,065,746, in view of *Frank et al.*, U.S. Patent No. 6,871,222, in view of *Thomas et al.*, U.S. Patent No. 6,460,052, and in further view of *Engel*, U.S. Patent No. 6,681,389.

Applicant's remarks in relation to *Short et al.*, *Szabo et al.*, and *Frank et al.* made in prior communications are incorporated by reference herein.

The Examiner employs *Short et al.* as a prior art reference in relation to a version control record comprising all versions of each type of data structure in a shared storage resource. However, *Short et al.* is limited to controlling compatibility between a **cluster** software version and various **dynamic-link libraries**, or DLLs, utilized by a software program present on the various nodes of the cluster. Thus, *Short et al.* does not teach versions of **data structure** in a

storage resource. Rather, *Short et al.* discloses determining compatibility between cluster software version and DLL version, not data structure versions. There is no teaching in *Short et al.* in relation to comparing the cluster software version with the version of data accessed by the software. In contrast, Applicant's invention is directed to determining compatibility between the software version operating on the node joining the cluster and the data structure in shared cluster storage to be accessed by that software. In addition, cluster nodes of Applicant operate different software versions as opposed to cluster software version of *Short et al.* which implies that all cluster nodes run the same version of software. Since all cluster nodes of *Short et al.* operate under the same software version, there is no need for a data version control.

Applicant has amended claims 1, 8, and 14 to address the shortcomings of the prior art. More specifically, the amendments presented herein are aimed to emphasize the limitations discussed above. No new matter has been added to the application with the amendments to the claims submitted herein. Support for the amendments is found in paragraphs 0005-0006 and 0022 - 0025 of Applicant's published patent application.

The Examiner employs *Engel* in relation to the data structure in the shared storage resource representing target data of a software application. Applicant has amended claims 1, 8, and 14 to clarify that the data structure in the shared storage is accessed by applications operating on a node joining the cluster. Support for the amendment is found in paragraph 0024 of Applicant's publication. No new matter has been added. In contrast to the amended claims of Applicant, *Engel* pertains to an application software on servers in a cluster, wherein the software is updated without manually taking each server offline. *Engel* does not teach the aspect of a node **joining the cluster** and trying to access data in the shared storage. In fact, there is no node joining the cluster in the invention of *Engel*. Rather, *Engel* discloses a version control file serving as a database of all files contained within a software image and dictating what type of initialization is necessary to start running on the new updated software. "To establish a rejection under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested on the prior art."<sup>1</sup>

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<sup>1</sup>MPEP §2143.03 (Citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

If the prior art references do not teach or suggest every claim limitation of the Applicant's invention, then they do not meet every requirement under 35 U.S.C. §103(a) and are not sufficient to uphold a rejection under 35 U.S.C. §103(a). As noted above, there is no teaching or suggestion in the combination of prior art references for the amended limitations of Applicant's pending independent claims.

It is Applicant's position that the claims, in their prior form and as amended, are patentable over the prior art based upon the current state of the law as applied to the legal definition of obviousness. The requirements for upholding a rejection under 35 U.S.C. §103(a) are clearly outlined in *Graham v. John Deere*<sup>2</sup> and maintained as a standard in the law in the Supreme Court decision of *KSR International Co. V. Teleflex, Inc.*<sup>3</sup>, hereinafter referred to as *KSR*. Under *Graham v. John Deere*, the first and second steps required for evaluating a prior art reference under 35 U.S.C. §103(a) are to first determine the scope and contents of the prior art and then ascertain the differences between the prior art and the claims in issue.<sup>4</sup> As the record has shown, *Engel* does not teach or suggest the aspect of the node joining the cluster and accessing data in shared storage. In fact, *Engel* is limited to an application software wherein the software is updated in a manner without manually taking each server offline. Based upon the current standard of the law of obviousness under 35 U.S.C. §103(a), it is Applicant's position that the rejection set forth by the Examiner is improper and should be removed. Accordingly, Applicant respectfully requests that the Examiner remove the rejections herein and grant an allowance of the pending claims.

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<sup>2</sup>*Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966) (holding that under ' 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined).

<sup>3</sup>*KSR International Co. V. Teleflex Inc. et al.*, 550 U.S. \_\_\_\_, 127 S.Ct. 1727 (2007), citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

<sup>4</sup>*Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966) (holding that under ' 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined).

## II. Conclusion

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. No new subject matter has been added to the application with the amendment to the claims presented herewith. Furthermore, Applicant is not conceding in this application that the claims are not patentable over the art cited by the Examiner, as the present amendments are only for facilitating expeditious prosecution of the allowable subject matter noted by the Examiner. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Accordingly, Applicant respectfully requests that the Examiner indicate allowability of claims 1, 3-6, 8-12, 14, 16-19, and 21-25, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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Date: March 12, 2009